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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
SIMI IULIO,)
)
Defendant.)

No. CR 10-168 JSW

**[PROPOSED] ORDER OF DETENTION
OF DEFENDANT SIMI IULIO**

The defendant Simi Iulio came before this Court on May 6, 2010, for a detention hearing. The defendant was present and represented by Federal Public Defender Jodi Linker. Assistant United States Attorney Benjamin Tolkoff represented the United States.

The government requested detention, submitting that no condition or combination of conditions of release would reasonably assure the safety of the community.

Pretrial Services submitted a report recommending detention of the defendant on the grounds of danger to the community.

Upon consideration of the Pretrial Services report, the court file and the party proffers as

1 discussed below, the Court finds by clear and convincing evidence that the defendant poses a
2 danger to the community and that no conditions could reasonably assure the safety of the
3 community. The Court orders the defendant detained.

4 The present order supplements the Court's findings at the detention hearing and serves as
5 a written findings of fact and statement of reasons as required by 18 U.S.C. § 3142(i).

6 The Bail Reform Act of 1984, 18 U.S.C. §§ 3141-50, sets forth the factors which the
7 Court must consider in determining whether pretrial detention is warranted. In coming to its
8 decision, the Court has considered those factors, paraphrased below:

- 9 (1) the nature and seriousness of the offense charged;
- 10 (2) the weight of the evidence against the person;
- 11 (3) the history and characteristics of the person including, among other considerations,
12 employment, past conduct and criminal history, and records of court appearances; and
- 13 (4) the nature and seriousness of the danger to any person or the community that would
14 be posed by the person's release.

15 18 U.S.C. § 3142(g).

16 The defendant is charged with one count of violating 18 U.S.C. § 922(g)(1) (felon in
17 possession of a firearm). The instant charge stems from an incident on or about December 25,
18 2009. San Francisco Police officers received a call of shots fired in the vicinity of the Bayview
19 neighborhood of San Francisco. Upon arrival, responding officers saw the defendant on the
20 second story deck of an outdoor staircase of an apartment building holding what appeared to be
21 an assault rifle. The defendant saw the officers and fled. The officers gave chase and arrested
22 the defendant. Retracing the path the defendant took when he fled, the officers came upon an
23 assault rifle. During the subsequent search of the area, officers found a .45 caliber pistol, several
24 45. caliber shell casings and one 7.62 mm. shell casing (the same caliber of ammunition used in
25 the assault rifle that was found).

26 In considering all of the facts and proffers presented at the hearing, the Court finds the
27 following factors among the most compelling in reaching its conclusion that no combination of
28 conditions could reasonably assure the defendant's appearance as required:

First, the defendant has a criminal record that demonstrates his propensity for violence.

The defendant has a 1988 conviction for manslaughter, a 2002 conviction for misdemeanor battery, and a 2007 conviction for felony battery upon a police officer. In addition to his convictions, the defendant has been arrested on firearms charges on four occasions prior to his arrest in this case, and has two arrests for crimes of violence not reflected above.

Second, the instant offense stemmed from a particularly dangerous incident. It appears, based upon the presence of more than one firearm and the fact that both firearms found were discharged, that the defendant may have been arrested after a gunfight. The government proffered that there is DNA and gunshot residue evidence that indicates that the defendant indeed possessed and possibly fired the subject firearm. Although the Ninth Circuit has held that the least important factor in a detention hearing is the strength of the evidence against the defendant, it is nonetheless a factor to be weighed, and it reflects that the defendant is a danger to the community.

These factors, among others adduced at the hearing, demonstrate by clear and convincing evidence that the defendant is a danger to the community.

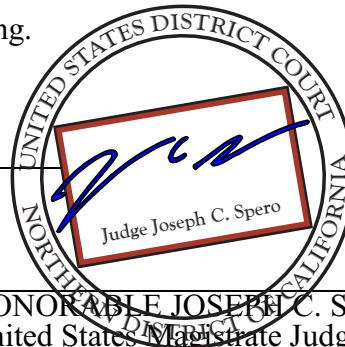
Accordingly, pursuant to 18 U.S.C. § 3142(I), IT IS ORDERED THAT:

(1) the defendant is committed to the custody of the Attorney General for confinement in a corrections facility;

(2) the defendant be afforded reasonable opportunity for private consultation with his counsel; and,

(3) on order of a court of the United States or on request of an attorney for the government, the person in charge of the corrections facility in which the defendant is confined shall deliver the defendant to an authorized Deputy United States Marshal for the purpose of any appearance in connection with a court proceeding.

Dated: May 10, 2010



HONORABLE JOSEPH C. SPERO
United States Magistrate Judge